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 In the Matter of)
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SBC IP COMMUNICATIONS, INC.)
PETITION FOR LIMITED WAIVER)
OF SECTION 52.15(g)(2)(i) OF THE)
COMMISSION’S RULES)
REGARDING ACCESS TO)
NUMBERING RESOURCES)
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WC Docket No. 99-200

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Background

On June 17, 2004, the Federal Communications Commission (FCC or Commission), Wireline Competition Bureau (WCB or Bureau) granted SBC IP Communications, Inc.'s (SBC IP) an information service provider affiliate of SBC Communications, Inc., request for Special Temporary Authority (STA) to obtain numbering resources directly from the Pooling Administrator (PA) for use in a limited, non-commercial trial of Voice over Internet Protocol (VoIP).¹ On July 9, 2004, PointOne filed a similar request for authority from the Bureau.

On July 16, 2004, the FCC issued a public notice seeking comment on a waiver request filed by SBC IP on July 7, 2004.² In its waiver petition, SBC IP requests that the Bureau grant a limited waiver of section 52.15(g)(2)(i) of the Commission's numbering rules to allow SBC IP to obtain numbering resources directly from the North American Numbering Plan Administrator (NANPA) and/or the PA without obtaining carrier certification. SBC IP states that it intends to use these numbering resources in deploying IP-enabled services, including VoIP services, on a commercial basis to residential and business customers.

¹ *In the Matter of Administration of the North American Numbering Plan*, CC Docket No. 99-200, DA 04-1721, Order at ¶ 5 (rel. WCB June 17, 2004) (SBC IP Order). In the Order granting SBC IP's request, the Bureau stated that SBC IP should obtain its codes from the PA because the diversity of geographic areas where SBC IP intends to conduct its trial would lead to an inefficient use of number resources if the NANPA assigned the codes.

² *Comment Sought on SBC IP Communications, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access To Numbering Resources*, Public Notice, DC 04-2144, CC Docket No. 99-200 (rel. WCB July 16, 2004).

The Commission Should Grant SBC IP's Waiver Request For All Similarly Situated Unregulated VoIP Providers

PointOne agrees with SBC IP that good cause exists to grant this limited waiver because it will allow all unregulated VoIP providers, including SBC IP, to deploy innovative new services using a more efficient means of interconnection between IP networks and the Public Switched Telephone Network (PSTN) without requiring that the VoIP provider obtain carrier certification. As explained by SBC IP in its waiver petition, many VoIP services in the market today allow customers on an IP network to call parties served by a carrier operating a time division multiplexed (TDM) network within the PSTN, and vice versa. In order for such calls to be possible, the VoIP provider must be able to assign a NANP telephone number to its customer; otherwise, a customer on the PSTN would have no way of dialing the VoIP customer. Pure VoIP providers,³ however, are information service providers, which may not be eligible for direct assignment of NANP telephone numbers under the Commission's existing rules. Accordingly, in order to obtain NANP telephone numbers that can be assigned to their customers, VoIP providers often purchase a local retail product from a competitive LEC (such as a Primary Rate Interface (PRI) ISDN line).⁴ Typically, the VoIP provider also uses this retail product to interconnect with the PSTN so it can send and receive certain types of traffic between its

³ PointOne uses the term "pure VoIP providers" to distinguish providers with an all IP network providing services with an "enhanced" feature set and/or "peer-to-peer" (P2P) providers from those providers that may offer bundled packages of information and telecommunications services out of the same corporate entity.

⁴ Pursuant to the *ESP Exemption*, enhanced service providers (ESPs) are treated as end-users for purposes of applying access charges. As end-users, ESPs are permitted to purchase local exchange services at business line rates from local exchange carriers. *See Amendment to Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, Order, 3 FCC Rcd 2631 at ¶ 2 n.8 (1988) (*ESP Exemption Order*). This is in contrast to interexchange carriers (IXCs) who provide telecommunications services by purchasing "access services" from local exchange carriers on a usage-sensitive basis. *See generally*, 47 C.F.R. § 69.1 *et. seq.*

network and the carrier networks. In this arrangement the competitive LEC terminates the VoIP traffic on the PSTN or delivers the traffic to another carrier for local termination on the PSTN.

While line-side interconnection established through the purchase of PRIs from competitive carriers has served a useful purpose, it may not be the most efficient or cost-effective means for a VoIP provider to originate or terminate traffic to the PSTN because the VoIP provider is dependent on a competitive carrier's facilities to access the incumbent LEC network. By interconnecting with the PSTN at a centralized switching location, e.g., an incumbent LEC tandem switch, PointOne believes it can more efficiently utilize its pure IP network to develop services that overcome the availability and scalability limitations inherent in the current methods of interconnection to end office switches.

In addition, although PointOne has always purchased local telecommunications services as end-users, pursuant to the Commission's long-standing ESP exemption, to enable its customers to access its IP services, the Commission's *AT&T VoIP Order* has had significant unintended negative consequences. VoIP providers are beginning to experience refusals by incumbent LECs to make local PRIs and PRI equivalents available for the origination or termination of VoIP traffic. By granting SBC IP's waiver request and making the grant generally applicable to all similarly situated VoIP providers, the Commission will enable VoIP providers to purchase trunk-side interconnection directly from the incumbent LECs at rates that accurately reflect the cost of providing such interconnection.

If the Commission Denies the SBC IP Waiver Petition, It Must Delay the Effective Date of SBC IP's STA

PointOne is concerned, however, that if the FCC denies the waiver petition, the Bureau unintentionally has given SBC IP an unfair advantage in the deployment of IP-enabled services through its grant of the SBC IP STA. In this highly competitive market, first movers have the ability to gain significant advantage over their competitors. Principles of fairness and equity dictate that the Commission not accord first mover advantage to any one provider through regulatory happenstance. If the Commission concludes, therefore, that it is not in the public interest to grant SBC IP's waiver request, PointOne urges the Commission to delay the effective date of SBC IP's STA until the number exhaust concerns have been addressed.

Specifically, through an *ex parte* meeting with the Bureau staff on July 23, 2004 to discuss PointOne's request for an STA, it has come to PointOne's attention that due to issues regarding the inefficient use of numbering resources associated with the grant of SBC IP's STA, the Bureau is not inclined to grant additional STA requests. It is PointOne's understanding that because SBC IP's STA request was limited to an internal trial, SBC IP would not be obtaining location routing numbers (LRNs) or loading the assigned codes into the LERG routing guide, therefore SBC IP cannot implement number pooling. The inability to participate in number pooling means that thousands of codes will go unused. Although the trial would be for a limited period of time, during that time, these unused codes would create significant, if temporary, number exhaust problems. Due to the number exhaust issues, the Bureau indicated to PointOne that it would not grant any additional similar STA's for unregulated VoIP providers.

These number utilization concerns are not a result specifically of PointOne's request, but are of equal concern in the trial planned by SBC IP. Although SBC IP stated that its trial was technical in nature, the "SBC Accessible Letter" posted on SBC's website seeking VoIP providers interested in participating in the trial with SBC IP,⁵ appears to indicate that the STA is intended to be a test of logistical and billing capability rather than technical feasibility. Because there is no indication that SBC IP is testing the technical feasibility of PSTN-IP interconnection, and in fact, many IP providers already connect to the PSTN through softswitch technology and the use of gateways, there is no reason why SBC IP should be permitted to proceed with its trial if all other unregulated VoIP providers are not also granted similar access to numbering resources. The Commission must endeavor to treat all non-carrier VoIP providers in a similar manner.

PointOne agrees with the Bureau that the concerns regarding number exhaust are valid. Rather than permitting SBC IP to move forward with its trial while other VoIP providers await a different result, the VoIP industry should be working with the Commission towards a solution to the number exhaust issue. Such an industry derived solution will enable all unregulated VoIP providers to test and perfect the logistics of trunk-side interconnection, thereby effectuating a more efficient means of interconnection between IP networks and the PSTN. This efficient means of interconnection could potentially lead to the development of new and innovative VoIP services for American consumers. Moreover in the long run, IP-based communications will likely aid in resolving number exhaust problems by, for instance, paving the way for each customer to

⁵ http://www.sbc.com/public_affairs/regulatory_documents/cei_plans_and_amendments/Illinois_Accessible_Letter_0808031_JZ_Edits.doc

utilize a single “follow-me” number, rather than a host of numbers for each of the consumers various services and end-user devices.

Conclusion

PointOne urges the Commission to be mindful of the warning it issued to the states against using numbering resources to deter competition. In its *Delegation Order* giving states the authority to implement certain numbering resource optimization measures, the Commission stated:

Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for want of numbering resources. For consumers to benefit from the competition envisioned by the 1996 Act, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible.⁶ *Delegation Order* at ¶ 13.

VoIP and other IP-enabled services hold the promise of competition and consumer choice envisioned in the 1996 Act. The Commission must ensure that its actions do not permit inadvertently one VoIP provider, SBC IP, to gain an unfair advantage over all other VoIP providers. As argued by SBC IP in its Waiver petition, and by SBC IP and PointOne in their individual requests for an STA, permitting unregulated VoIP providers to apply for numbering resources without obtaining carrier certification is a critical step to establishing more efficient interconnection arrangements between VoIP providers and incumbent LECs, leading to more rapid availability of innovative and cost efficient IP-enabled service.

⁶ *In the Matter of Numbering Resource Optimization- Iowa Utilities Board Petition for Delegation of Additional Authority and Request for Limited Waiver*, CC Docket No. 99-200, NSD File No. L-99-96; Rel. July 20, 2000, para. 13 (Delegation Order.).

Accordingly, PointOne urges the Commission to review the record in this proceeding and determine that the public interest requires that it permit all similarly situated unregulated VoIP providers to apply for numbering resources. Equity and fairness demand that the application of the rule be the same for all information service providers.

Respectfully submitted,

/s/ electronically submitted

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